IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10318 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT LAXMI MAJOOR KAMDAR CO-OP SOC LTD

Versus

STATE OF GUJARAT

Appearance:

MR ND NANAVATI for MR KV SHELAT for Petitioner

MR AJ DESAI, Ld AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 15/11/2000

ORAL JUDGEMENT

Rule. Mr.A.J.Desai, learned AGP waives service of rule on behalf of the respondents.

I have heard Mr.Nanavati, learned Sr. Counsel

and Mr.K.V.Shelat, learned Counsel appearing on behalf of the petitioner. I have also heard Mr.A.J. Desai, learned AGP, appearing on behalf of the respondent State. A tender has been called for construction of R.C.C. Pipe lines for Strong Water "B.C. Main" with six sub-mains along Road No.2 in Gandhinagar Township. While publishing the tender notice qualification has been prescribed for the persons, who may offer the rates for construction of the said work. The tender has been called from established Civil Engineering Contractors with a capability in the construction of R.C.C. Pipe line works, who have the following qualifications:

a. Laying drainage R.C.C. pipe line of 600 mm. diameter and above for total length of 2500 Rmt. during last three years.

b. A minimum annual turn over of Rs.90 lacs in any one year during last three years.

c. One work of laying R.C.C. pipe line consisting not less than of Rs.80 lacs during any one year out of last three years should have been completed satisfactorily.

The petitioner offered the price at which he is agreeable to complete the construction work. It is an admitted fact by Respdt. that the petitioner fulfills all the conditions except condition "c" as stated above i.e. the petitioner has not constructed any R.C.C. pipe line consisting of not less than Rs.80 lacs during any one year out of last three years. Along with the tender form, the Government has indicated the last three years as "1997-98, 1998-99 and 1999-2000". Therefore, it is evident that during the aforesaid three financial years a contractor to be eligible to offer the price in respect to the tender must have satisfactorily completed one work of not less than Rs.80 lacs in any one year out of the aforesaid three financial years. It is contended by Mr.Nanavati, learned Sr. Counsel for the petitioner that the petitioner has constructed R.C.C. pipe line for Surat Municipality and according to the letter issued by the Junior Engineer of Surat Municipal Corporation, the petitioner contractor started the construction of R.C.C. pipe line on 9-2-1996 and according to the terms of the tender, the petitioner was to complete the work by 17-5-1997, but before the last date of completion of the work, the petitioner has completed the work on 25-1-1997. Mr.Nanavati further submitted that according to the agreement the period of work of the petitioner under Surat Municipal Corporation extends during the financial

year 1997-98 and even though he has completed the work on 25-1-1997 the work done by the petitioner should be deemed to include the period of the financial year 1997-98. Learned Counsel further submitted that after the initial completion of the work on 25-1-1997 the Surat Municipal Corporation by its letter dated 23-4-1997 informed the petitioner that there are some defects in the newly constructed R.C.C. pipe line and the petitioner was directed to repair the defective part of the pipe line. He was also directed to make some fresh manholes which were broken before the complete work was taken over by the Surat Municipal Corporation. Accordingly, the petitioner during the period from March to June 1997 repaired the defective part of the R.C.C. pipe line and has also made some new manholes towards the completion of the work. Accordingly, when the work was completed in all respects by the petitioner in July 1997 the Surat Municipal Corporation has issued a letter to the petitioner on 30-7-1997 that he has satisfactorily completed the work in July, 1997 and final bill was prepared in July itself by the Surat Municipal Corporation for the payment to the petitioner contractor. Mr.Nanavati accordingly submitted that even though the construction of R.C.C. pipe line under Surat Municipal Corporation has been started by the petitioner on 9-2-1996, it was completed to the satisfaction of the Surat Municipal Corporation authority in July 1997, though the date of completion of work was 17-5-1997. Therefore, it appears that the Surat Municipal Corporation has extended the period for completion of the work till July 1997. Mr.Nanavati accordingly submitted that the work done by the petitioner under Surat Municipal Corporation is of Rs.91.73 lacs. Mr.Nanavati further submitted that it is not correct that the petitioner has not completed any one work during any one year out of the last three financial years mentioned in the tender form. Consequently, learned Counsel submitted that the petitioner fulfills the eligibility criteria prescribed by the respondent Government and, therefore, there is no reason not to consider the offer made by the petitioner.

Mr.A.J.Desai, learned AGP appearing on behalf of the State submitted that the petitioner did not construct any R.C.C. pipe line of not less than Rs.80 lacs during the last three financial years i.e. 1997-98, 1998-99 and 1999-2000. Mr.Desai has drawn my attention to Annexure "B" of the tender notice, from where it appears that the work done by the petitioner under Surat Municipal Corporation was completed by the petitioner on 25-1-1997. It is submitted by Mr.Desai that the Annexure "B" of the

tender notice has been filled up by the petitioner himself and he has indicated that that work under Surat Municipal Corporation was completed by him on 25-1-1997 and, therefore, this period does not fall within the financial year 1997-98. The learned AGP has also drawn my attention to Annexure "C" of the tender notice, which was filled up by the petitioner himself. It is submitted by Mr.Desai that the R.C.C. pipe line work done by the petitioner is less than Rs.80 lacs and, therefore, the petitioner does not fulfill the eligibility criteria prescribed by the Government in the tender notice. From Annexures "B" and "C", it appears that the petitioner has undertaken many other work of construction of R.C.C. pipe line, but the value of the said works is either less than Rs.80 lacs or if at all more than the value of Rs.80 lacs, then the works are of the period prior to the financial year 1997-98. Mr.Desai has also argued that the Surat Municipal Corporation has issued the certificate regarding the satisfactory completion of the work on 30-7-1997 but in the said certificate in Sr.7 it has been clearly mentioned that the work was completed on 25-1-1997, which is prior to the financial year 1997-98. Mr. Desai accordingly submitted that since the petitioner has not completed any one work of more than Rs.80 lacs during the last three financial years (1997-98, 1998-99 and 1999-2000) it cannot be said that the contractor has fulfilled the third condition prescribed by the Government in the tender notice.

I have considered the rival contentions of all the Counsel of both the parties. It appears that the respondent Government has taken a very strict technical view that the petitioner did not perform any R.C.C. pipe line work during the last three financial years prescribed in the tender form. From the letter of Junior Engineer, Surat Municipal Corporation, it appears that the work of construction of R.C.C. pipe line under Surat Municipal Corporation was undertaken by the petitioner for an amount of Rs.91.73 lacs and work was allotted to the petitioner on 7-2-1996 and as per the terms of the agreement the petitioner has completed the work by 17-7-1997. Therefore, it is evident that the period of contract for construction of the R.C.C. pipe line extended upto the financial year 1997-98. It is true that the petitioner has initially completed the work before the date of completion specified by the Surat Municipality, but such earlier completion should not be taken as a ground that he has not performed any actual work during the financial year 1997-98. Since the date of completion of the work covers the financial year 1997-98 I am of the view that for the purpose of

submitting the present tender the petitioner should be considered as eligible for offering the price for construction of the present work. Apart from the aforesaid technicality, it appears from Annexures "B" and "C" that the petitioner has also undertaken other construction work of R.C.C. pipe line at various places and, therefore, it is apparent that the petitioner has sufficient experience in the construction work of R.C.C. pipe line. The object of seeking experienced persons is to see that the proposed work of the Government is done efficiently and without any defects. In the present case it appears that the petitioner has sufficient experience in the construction work of R.C.C. pipe line. Since the work of Surat Municipal Corporation is extended to the period during the financial year 1997-98 and the amount of the work exceeds Rs.80 lacs, I am of the view that the tender submitted by the petitioner should be considered by the respondent Government. It is, however, made clear that it is not obligatory on the part of the respondent Government to allot the work to the petitioner, even if he quotes the lowest price. It is open to the Government to examine each and every tender submitted by the contractors, the experience and expertise of those contractors, who are working in the construction of R.C.C. pipe line and then allot work to a competent person, irrespective of that a competent person has not quoted the lowest price. The lowest price should not be the sole criteria to determine the allotment of work.

After considering the submissions of all the Counsel of both the parties I am of the view that the petition should be allowed and accordingly it is allowed. Rule is made absolute to the extent indicated above. However, no order as to costs.

15-11-2000 (P.K.Sarkar, J.)

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